



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA-2017-0072; Notice 2]

Jaguar Land Rover North America, LLC, Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Jaguar Land Rover North America, LLC (JLR), on behalf of Jaguar Land Rover Limited, has determined that certain model year (MY) 2012-2018 Jaguar motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 135, *Light Vehicle Brake Systems*. JLR filed a noncompliance report dated June 22, 2017. JLR also petitioned NHTSA on July 20, 2017, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. For the reasons stated below, NHTSA grants the petition.

FOR FURTHER INFORMATION CONTACT: John Finneran, Office of Vehicle Safety Compliance, NHTSA, telephone (202) 366-5289, facsimile (202) 366-3081.

SUPPLEMENTARY INFORMATION:

I. Overview: JLR, on behalf of Jaguar Land Rover Limited, has determined that certain MY 2012-2018 Jaguar motor vehicles do not fully comply with FMVSS No. 135, *Light Vehicle Brake Systems* (49 CFR 571.135). JLR filed a noncompliance report dated June 22, 2017, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. JLR also petitioned NHTSA on July 20, 2017, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR

part 556, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published, with a 30-day public comment period, on September 1, 2017, in the **Federal Register** (82 FR 41677). One comment was received. To view the petition, any comments, and all supporting documents, log onto the Federal Docket Management System (FDMS) website at: <https://www.regulations.gov/>. Then follow the online search instructions to locate docket number “NHTSA-2017-0072.”

II. Vehicles Involved: Approximately 126,127 of the following Jaguar motor vehicles, manufactured between February 8, 2012, and June 19, 2017, are potentially involved:

- 2017-2018 Jaguar F-Pace
- 2017-2018 Jaguar XE
- 2017-2018 Jaguar XF
- 2014-2018 Jaguar F-TYPE
- 2013-2017 Jaguar XJ
- 2012-2015 Jaguar XK

III. Noncompliance: JLR explains that the noncompliance is that the brake fluid warning statement label on the subject vehicles is not permanently affixed as required by paragraph S5.4.3(a) of FMVSS No. 135. Specifically, JLR installed a label that fits over the neck of the brake fluid reservoir that can be removed when the brake fluid reservoir cap is removed.

IV. Rule Requirements: Paragraph S5.4.3(a) of FMVSS No. 135 titled “Reservoir Labeling” includes the requirements relevant to this petition:

- Each vehicle equipped with hydraulic brakes shall have a brake fluid warning statement that reads as follows, in letters at least 3.2 mm (1/8 inch) high:

“WARNING: Clean filler cap before removing. Use only ____ fluid from a sealed container.” (inserting the recommended type of brake fluid as specified in 49 CFR 571.116, *e.g.*, “DOT 3.”).

- Permanently affixed, engraved or embossed.

V. Summary of JLR’s Petition: As background, in JLR’s noncompliance report, JLR stated that a Product Safety and Compliance Committee (PSCC) Investigation was opened on June 6, 2017, following communication from a safety compliance engineer from NHTSA’s Office of Vehicle Safety Compliance. The communication highlighted a concern that the brake reservoir label was not permanently affixed to the brake fluid reservoir as required by FMVSS No. 135, *Light Vehicle Brake Systems*. On June 13, 2017, JLR’s PSCC concluded that the concern should be forwarded to the Recall Determination Committee (RDC). The RDC reviewed all information on June 15, 2017, and concluded that the issue represented a compliance concern related to FMVSS No. 135, *Light Vehicle Brake Systems*, but that the condition was considered inconsequential and requested that a petition for decision of inconsequential noncompliance be filed with NHTSA.

JLR described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, JLR submitted the following reasoning:

1. The installed label will not fall off or become displaced during normal vehicle use or operation.
2. The installed label provides mechanical resistance to being removed.
3. There is interference between the installed label and reservoir filler neck such that a minimum of 2mm interference exists.

4. The installed label is only able to be removed when the brake fluid reservoir cap is displaced which, based on routine maintenance schedules, is once every 3 years in service.
5. The filler cap shows clearly the specification of brake fluid required.
6. The filler cap provides clear symbols including one for caution and one referring to handbook instructions. The owner's handbook descriptions indicate the proper brake fluid specification to be used in the vehicle.
7. The installed cap conforms to the requirements of ISO9128:2006 which is a requirement of UN-ECE Regulation 13 and 13h. NHTSA has previously granted petitions to accept ISO symbols in the absence of FMVSS labeling:
 - a. Jaguar Land Rover petition regarding controls and displays including brake system-related telltales (78 FR 66101-03).
 - b. Ford petition regarding controls and displays including brake system-related telltales (78 FR 69931-32)
 - c. Hyundai petition regarding lower anchorage identification (73 FR 38290-91).
8. JLR has not received any customer complaints on this issue.
9. There have been no accidents or injuries as a result of this issue.
10. Vehicle production has been corrected to fully conform to FMVSS No. 135, *Light Vehicle Brake Systems*, S5.4.3(a) with a new filler cap.

JLR concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing

notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. Public Comments

Comments were received from one individual who was opposed to NHTSA granting JLR's petition and provided a wide-ranging list of objections, many of which were not directly related to the petition issue of a non-permanent brake master cylinder reservoir label. Applicable comments included the following:

1. Brake fluid is a toxic, flammable and combustible liquid that requires a permanently affixed warning label;
2. Jaguar cannot say with 100% certainty or any probability that the label will not fall off or be displaced during vehicle use or operation;
3. Subsequent purchasers will be exposed to known and undisclosed danger;
4. The vehicles have no routine maintenance schedule and are brought in to be serviced within days or months of purchase;
5. The filler cap alone does not adequately serve as a warning label and is not a permanent fixture;
6. A filler cap can be easily removed and replaced with any other cap that has the same measurements;
7. Jaguar has received customer complaints which have not been provided to NHTSA; and
8. Jaguar cannot accurately assert that there has been no accidents or injuries regarding the issue in question.

VII. NHTSA's Analysis

NHTSA has evaluated the merits of the inconsequential petition submitted by JLR and has considered the applicable comments received from the public, and has determined that this particular noncompliance is inconsequential to motor vehicle safety. Specifically, paragraph S5.4.3 of FMVSS No. 135 requires that each vehicle equipped with hydraulic brakes have a brake fluid warning statement with specific language that is (a) permanently affixed, engraved or embossed, (b) located so as to be visible by direct view either on or within 100 mm of the brake fluid reservoir filler plug or cap, and is (c) a color that contrasts with its background if it is not engraved or embossed. JLR in its submittal of its Part 573 acknowledged that the brake fluid warning label is not permanently affixed as it can be removed once the filler cap is removed. However, the warning statement wording on the label is correct, and requirements (b) and (c) above are met.

NHTSA has concluded that the noncompliance is inconsequential based on two principal reasons: (1) Although the label can be removed, the chance of it becoming detached is highly improbable, and (2) in the unlikely event of label displacement, the required information specified on the label is available from other locations or sources. These reasons are further explained below:

Addressing item (1) above, the installed label appears to be made of a durable plastic material which is positioned on the filler neck and is retained by the filler cap. During normal vehicle use and operation, the filler cap remains attached to the reservoir, and the label is effectively permanently affixed. The reservoir filler cap and label are positioned within the engine compartment and in many cases, further sealed below plastic trim. Thus, to access and remove the label requires intentional actions by an owner or service technician by hood release,

secondary hood release, trim removal, cap removal and finally pulling the label itself off. This multi-step process will not occur inadvertently.

JLR explains that the routine maintenance schedule for the brake fluid is once every 3 years in service. Unless a brake fluid issue arises during the intervening time period, the cap should remain affixed and the label in place. In addition, FMVSS No. 135 S5.4.4 requires the brake fluid reservoir to be so constructed that the level of fluid can be checked without the need for the reservoir to be opened. Thus, the frequency with which the cap will be removed and therefore the time frame in which the label can be removed is exceedingly limited. We further note that the removal of the brake filler cap for fluid addition, replacement or flush is predominately performed by trained service technicians, not vehicle owners, who will have no reason to remove a warning tag and are knowledgeable on precautions when dealing with brake fluid.

Addressing item (2) above, the S5.4.3 warning statement that is required to be on or near the reservoir filler opening has four essential components as listed below:

1. The word “Warning”
2. The statement “Clean filler cap before removing”
3. Fluid specification ie., “DOT 4” fluid, and
4. The statement “Brake fluid from a sealed container”.

In the unlikely event the label is removed, these four specified items contained on the warning label are available from other locations or sources. The filler cap itself has four embossed yellow symbols on a black background. One symbol is for the brake system, indicating that the reservoir is brake related. The second symbol is an exclamation point within a triangle, generally recognized as a pictorial equivalent to the word “warning,” and the third is a symbol

representing the owner's manual, implying that the document should be reviewed prior to tampering with the reservoir system. The owner's manual provides instructions for topping off the brake fluid, stating "always use the brake fluid with the correct specifications, only use new fluid from an airtight container, and to clean the brake fluid filler cap before removing..." Thus, the reservoir cap symbols pictorially warn and instruct that prior to cap removal, the owner's manual should be reviewed where all the pertinent maintenance information is described and is redundant to the label statements. Therefore, in the unlikely situation where the label has been removed, the technician is still warned and guided as to the proper procedures for working with the master cylinder reservoir opening. The fourth cap marking is "DOT 4," which is redundant to the label listing and is arguably the most important caution, as the fluid used is critical to the performance and durability of the brake system. Even without the label, the appropriate fluid is clearly indicated.

Furthermore, as indicated by JLR there have been no customer complaints or accidents as a result of this issue. As the noncompliance has existed for some models since 2012, a significant amount of time has elapsed in which the problem could have arisen, yet it has not been noted by any complaints or implicated in any accidents.

Although the S5.4.3 warning label is not technically permanently affixed as required in S5.4.3 (a) the noncompliance is inconsequential to motor vehicle safety because the likelihood of the tag being displaced under normal vehicle operation and usage is exceedingly small, and all the information required by S5.4.3 even in the absence of the label is detailed in the owner's manual which is pictorially referenced by symbols on the cap itself. Lastly, it is likely that only trained service technicians will remove the cap leaving the label in place, and the critical fluid specification "DOT 4" is both on the label and the cap.

VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that JLR has met its burden of persuasion that the FMVSS No. 135 noncompliance is inconsequential to motor vehicle safety. Accordingly, JLR's petition is hereby granted and JLR is exempted from the obligation of providing notification of, and a remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that JLR no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after JLR notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

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